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09/672,304	09/29/2000	Neelakantan Sundaresan	AM9-99-0146	2605

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/672,304
Filing Date: September 29, 2000
Appellant(s): SUNDARESAN, NEELAKANTAN

James E. Howard
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03 March 2006 appealing from the

Office action mailed 19 August 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of

making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it

pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode

contemplated b9 the inventor of carrying out his invention.

Claims 1-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably

convey to one skilled in the relevant art that the inventor(s), at the time the application

was filed, had possession of the claimed invention. Specifically, Claims 1, 7, 17 and 23

contains the term "actual" that is not in the specification of the current application. The

term "actual" was inserted into the claims with the Amendment of June 07, 2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable by Joel A. Ronning (U.S. Patent Application Publication No. 2003/0212992 and Ronning hereinafter) in view of Tetsuya Yamane (U.S. Patent NO. 6,167,436 and Yamane hereinafter).

Regarding Claims 1, 3, 5-8, 10-1 1, 13, 15-17, 19 and 21-23 Ronning discloses:

downloading a first file on the network from a server to a client (Page 1, paragraph [0085], in download routine 584, server 205 typically transmits a file list to the agent... the user selects a file in the file list download);

accessing a first file on the network from a server to a client (Page 2, Paragraph 0035, i.e. End user machine 201 transmits a request 228 or 229 to server 205 from agent module 203 or page 202, possibly including a request for a particular web page; and see also Page 9, Paragraph 0104, i.e. the server sends to the agent a file information response with recommended updates);

setting an access time to access a second file on said server (Figure No. 15, Element No. 740- 743; see also Figure No. 19)

Ronning's reference discloses all of the claimed subject matter set forth above, except the reference does not explicitly indicate:

a- accessing time data from within the first file;

b- wherein the time data is an actual time when said second file is scheduled to be updated (scheduled updates).

However Yamane's reference teaches:

a- accessing time data from within the first file[1] (Figure 2, i.e., update time); and

b- wherein the time data is an actual time when said second file is scheduled to be updated (Figure 2, i.e., next update prediction time).

Ronning, teaches a system that enables an agent to connect to a server to search for file updates, then the server sends to the agent or the agent downloads the file update from the server (limitation one of claim one). All this is being done based on application signatures to identify the files that require update.

Yamane, teaches a system where it predicts a future update including setting an actual time and date of when this update will occur (col. 4, line 63 – col. 5, line 3; Col 5, Lines 48-56).

Given the intended broad application of the Ronning system, it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the teachings of Ronning with the teachings of Yamane to have the agent to not only request a web page from the server (Ronning, Page 2, Paragraph 0035), but to also include future recommended updates; as the agent is already accessing the server to search for updates and the server is already comparing the file signatures to see which file needs an update. Including the feature of Yamane for the next prediction update is obvious as one would like to automate the process of having the system to set the time for the next update (Yamane) instead of manually having the user setting it

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[1] Please note that the examiner is interpreting the "file and the "table" of Figure No. 2 to be the same, as they both are storage units; also because a table can be sent as a file attachment (please see the meaning of "file" in the Microsoft Computer Dictionary, Fifth Edition).

(Ronning, Figure 19)., another reason would be to reduce the traffic congestion by

minimizing the number of times the agent have to search the server for updates in the

Yamane's system.

Regarding Claims 2, 9 and 18. Ronning discloses wherein the second file is the

same as the first file (Ronning, Figure No. 15, Element No. 740, i.e. update); and

Yamane also discloses wherein the second file is the same as the first file (Figure No. 2,

i.e. the link for http://www.a.co.jp is being updated).

Regarding Claims 4, 12 and 20, Ronning discloses channel definition files

(Figure 17 and corresponding text[2]).

Regarding Claim 14, Ronning discloses accessing time is after the schedule time

(Figure 19, and corresponding text).

(10) Response to Argument

Argument(1): None of the applied references teaches or suggests the features of

the present invention including:

   1) setting an accessing time to access a second file on a server based on time

   data that includes an actual time when the second file is scheduled to be updated

   (independent claims 1 and 17);

2) setting an accessing time to re-access a server based on time data that includes an actual time when a second file is scheduled to be updated (independent claim 7); and

3) means for setting an accessing time to access a second file on a server based on time data that includes an actual time when the second file is scheduled to be updated (independent claim 23).

In response to the arguments (1), Examiner respectfully submits that Ronning teaches **"setting an accessing time to access a second file on a server"** as using schedule download screen 780, the agent receives and stores schedule information for the selected file for downloading a selected file. Schedule information includes any type of date-based or time-based information for use in scheduling downloading of files or search for file updates ([0082] and Fig. 15, element 740-743, and Fig. 19).

Ronning does not explicitly teach that time data that includes an actual time when a second file is scheduled to be updated.

Yamane, however, teaches **"time data that includes an actual time when a second file is scheduled to be updated"** as the next update prediction time to be outputted and updated by the next update prediction time storage section is stored so as to correspond to each link. Acquiring data specified by a link according to time information; determining whether or not the acquired data is updated, and updating the

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[2] Please note that according to the specification of pages 1-2 of the current application, a CDF file is a file that contains tags, like for example last modified (Fig 17, Element 772), schedule (Fig 17, Element 756; see also Fig 19) and channel item (Fig 17, Element 766, i.e., Product Name).

time information according to a result at the determining step (col. 2, lines 28-33; col. 5,

lines 48-56 and Fig. 2).

*Examiner notes that WordNet defines the term **schedule** as an ordered list of*

*times at which things are **planned** to occur.*

In this case, Ronning's teaching is directed to agent searches for updates to files

by using application signatures to uniquely identify files stored on a user's machine and

transmitting the application signatures to a server storing the updates. The user can set

parameters related to control of the downloading and search for file updates, including

scheduling of downloads for selected files and scheduling of automatic searching for

updates on a periodic basis (abstract). Yamane is drawn to a **next update** prediction

time storage section receives the **present time from a clock** section and transfers part

or all of the links whose corresponding next update prediction time are earlier than the

present time to a transmission/reception section. The update history storage section

adds the extracted **latest update time in the update history** corresponding to the link

and calculates the next update prediction time from the added and updated update

history (abstract).

Technically, Ronning along teaches the limitation "setting an accessing time to

access a second file on a server based on time data that includes an actual time when

the second file is scheduled to be updated" as claimed as can be seen from the above.

However, due to Appellant's arguments which place a lot of emphasis on the word

"ACTUAL", the Examiner has included Yamane in the rejection as a reinforcement

because Yamane explicitly teaches "calculating a **next update** prediction time storage

section receives the **present time from a clock** section..." (abstract and col. 4, lines

40-47) in a effort to satisfy Appellant's definition of an ACTUAL time.

Appellant's Specification page 8, lines 10-17 discloses:

> The first time the web crawler visits the website, the web crawler
>
> downloads the CDF file and keeps the site in a database, storing the
>
> CHANNEL and SCHEDULE information. ***Next the web crawler uses***
>
> ***the SCHEDULE information in the CHANNEL tag to decide when to***
>
> ***visit the website next.***
>
> In one embodiment, the next visit is normalized by the web crawler's
>
> own parameters as to *when* to crawl a site. For instance, if a web crawler
>
> has its own schedule and decides to crawl less frequently than the
>
> SCHEDULE value, it uses its own schedule than the web site's
>
> SCHEDULE value.

Appellant argues that, on page 17-19 of the Appeal Brief, an actual (i.e., existing,

real, veritable) time is **a scheduled time existed in fact** and none of the scheduled

time from Ronning or update prediction time from Yamane met the Appellant's definition

of an ACTUAL time. It is submitted that any SCHEDULED time is planned time for an

actions to occur as mentioned above. Therefore, Examiner is not convinced that

Appellant's actual time is any different from the scheduled time of Ronning or update

prediction time of Yamane as they all have a similar purpose: PERFORM AN UPDATE

WHEN THE SET TIME IS REACHED (i.e., scheduled actual time).

As such, based on the above, both Ronning and Yamane teach "...actual time

when a second file is scheduled to be updated". Hence, both applied prior art teach the

limitation as claimed.

Argument(2): The examiner admits that the Ronning et al. reference "does not

explicitly indicate: ...the time data is an actual time for future updates (scheduled

updates)." The Examiner alleges that the Yamane et al. reference remedies the

deficiencies of the Ronning et al. reference. However, the Examiner fails to present a

prima facie case for obviousness by failing to provide a prior art reference that teaches

or suggests all of the claim limitation. In particular, the Examiner has failed to apply a

reference that teaches or suggests an actual time when a second file is scheduled to be

updated.

In response to the arguments (2), Ronning's teaching is directed to agent

searches for updates to files by using application signatures to uniquely identify files

stored on a user's machine and transmitting the application signatures to a server

storing the updates. The user can set parameters related to control of the downloading

and search for file updates, including **scheduling of downloads** for selected files and

scheduling of automatic searching for updates on a periodic basis (abstract). Yamane

is drawn to a next update prediction time storage section receives the present time from

a clock section and transfers part or all of the links whose corresponding next update

prediction time are earlier than the present time to a transmission/reception section.

The update history storage section adds the extracted **latest update time in the**

update history corresponding to the link and calculates the next update prediction time

from the added and updated update history. Yamane further teaches "calculating a

next update prediction time storage section receives the **present time from a clock**

section..." (abstract and col. 4, lines 40-47).

it would have been obvious to a person of ordinary skill in the art at the time of

Appellant 's invention to modify the teachings of Ronning with the teachings of Yamane

to have the agent to not only request a web page from the server (Ronning, Page 2,

Paragraph 0035), but to also include future recommended updates; as the agent is

already accessing the server to search for updates and the server is already comparing

the file signatures to see which file needs an update. Including the feature of Yamane

for the next prediction update is obvious as one would like to automate the process of

having the system to set the time for the next update (Yamane) instead of manually

having the user setting it (Ronning, Figure 19). Another reason would be to reduce the

traffic congestion by minimizing the number of times the agent have to search the

server for updates in the Yamane's system.

Based on the above, Examiner submits that Ronning and Yamane both teach the limitation "actual time" aspect of the claimed invention as Ronning's scheduled time to perform update and Yamane's next update prediction time are equivalent with Appellant's claimed actual time that is scheduled for a file to be updated.

Argument(3): The "Response to Arguments" in the august 19, 2005, Final Office Action, the examiner alleges that figure 2 discloses an "actual time" where "the next update is clearly indicated, for example, the file or the web page identified by the URL http:www.a.co.jp is scheduled to be updated at exactly 12:00 o'clock on July 1st. However, the Examiner's allegation that this update prediction time of, for example, 12:00 directory contradicts the disclosure of the Yamane et al. reference. Therefore, the 12:00 update prediction time is neither a scheduled update time, nor time data that was accessed from the first file regarding when that first file is scheduled to be updated.

In response to the arguments (3), Examiner respectfully submits that as defined by WordNet **schedule** as an ordered list of times at which things are **planned** to occur and Appellant's Specification page 8, lines 10-17 discloses:

> The first time the web crawler visits the website, the web crawler
> downloads the CDF file and keeps the site in a database, storing the
> CHANNEL and SCHEDULE information. ***Next the web crawler uses***
> ***the SCHEDULE information in the CHANNEL tag to decide when to***
> ***visit the website next.***

In one embodiment, the next visit is normalized by the web crawler's

own parameters as to *when* to crawl a site. For instance, if a web crawler

has its own schedule and decides to crawl less frequently than the

SCHEDULE value, it uses its own schedule than the web site's

SCHEDULE value.

At this point, it should be apparent to the reader that Appellant's actual

time to SCHEDULE the system to update a file is in conformity with

conventional systems which provide scheduled updates on periodic basis to

download update files. As such, Appellant's actual SCHEDULED time is the

future time, or plan time, or prediction time.

Yamane teaches next update prediction time is an update action which

would be performed by the system when the present time (clock) reaches the

prediction time (i.e., scheduled time). Next the update history storage section

adds the extracted latest update time to the update history corresponding to

the link transferred to the transmission/reception and calculates the next

update prediction time from the additionally updated update history (col. 5, line

65 – col. 6, line 6).

Based on the above cited textual passages, Examiner submits that

Appellant's claimed TIME DATA (i.e., actual time data) is a scheduled time

data which is equivalent to Yamane's update prediction time data. As a result,

Yamane teaches the limitation as claimed.

Withdrawal of 35 USC § 112

On page 17, last paragraph of the Appeal Brief, Appellant argues that "...In particular, the written description describes an exemplary **SCHEDULE** tag that indicates that a channel is scheduled to be updated between the earliest time of 2 and the latest time of 6. These times of 2 and 6 are "actual" times in that these times already exists in fact in the schedule and thus, are actual times." Examiner finds that the arguments are persuasive and; therefore, the 112 first rejection that was given in the Final Office Action mailed on 19 August 2005 is hereby withdrawn.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion

Claims 1-23 are properly rejected under 35 U.S.C §103(a).

In light of the foregoing arguments, the Examiner respectfully requests the Honorable Board of Appeals to sustain the rejections.

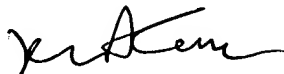Respectfully submitted,

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